

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>RAYMOND ORRAND, et al.,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
	:	<b>Case No. C2-09-CV-0212</b>
<b>v.</b>	:	
	:	<b>JUDGE ALGENON L. MARBLEY</b>
<b>WEST END LAND DEVELOPMENT</b>	:	
<b>INC., et al.,</b>	:	<b>Magistrate Judge King</b>
	:	
<b>Defendants.</b>	:	

**ORDER**

This matter is before the Court on Defendant West End Land Development, Inc.’s (“Defendant”) Motion for Voluntary Dismissal of Counterclaims Without Prejudice (Dkt. 25). On April 29, 2009, Defendant filed its Counterclaims against Intervenor Plaintiff International Union of Operating Engineers, Local 18's (“Intervenor Plaintiff”). Defendant now seeks to dismiss these counterclaims without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). Intervenor Plaintiff opposes Defendant’s Motion because of the effort and expense that have already been expended in this case. Namely, Intervenor Plaintiff has participated in the discovery process for Defendant’s Counterclaims and has filed a dispositive motion (Dkt. 24).

The decision whether to grant or deny a motion under Fed. R. Civ. P. 41(a)(2) is in the discretion of the district court. *Warfield v. Allied Signal TBS Holdings, Inc.*, 267 F.3d 538, 541 (6<sup>th</sup> Cir. 2001). This Court finds that dismissing the counterclaims without prejudice at this stage in the proceedings would result in prejudice to the Intervenor Plaintiff. *See Grover v. Eli Lilly and Co.*, 33 F.3d 716, 718 (6<sup>th</sup> Cir. 1994) (courts consider, among other factors, the effort and expense by defendant and whether a motion for summary judgment has been filed by defendant). Accordingly, Defendant’s Motion for Voluntary Dismissal of Counterclaims Without Prejudice

is **DENIED**.

**IT IS SO ORDERED.**

s/Algenon L. Marbley  
**ALGENON L. MARBLEY**  
**United States District Court Judge**

**DATED: May 4, 2010**